

CCRB INVESTIGATIVE RECOMMENDATION

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|---|---|---------------------------|--|---|---------------------------------|
| Investigator: William Rasenberger | Team: Squad #7 | CCRB Case #: 202006547 | <input checked="" type="checkbox"/> Force | <input checked="" type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input type="checkbox"/> Injury |
| Incident Date(s) Saturday, 05/30/2020 10:00 PM | Location of Incident: Intersection of Bedford Avenue and Church Avenue | Precinct: 67 | 18 Mo. SOL 11/30/2021 | EO SOL 5/4/2022 | |
| Date/Time CV Reported Thu, 09/10/2020 9:30 PM | CV Reported At: IAB | How CV Reported: Mail | Date/Time Received at CCRB Mon, 09/28/2020 12:27 PM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
| | | |
| | | |
| | | |

| Witness(es) | Home Address |
|-------------|--------------|
| | |

| Subject Officer(s) | Shield | TaxID | Command |
|-----------------------|--------|--------|---------|
| 1. POM Johnny Marquez | 13959 | 960876 | SRG 3 |
| 2. An officer | | | |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|--------------------------|-----------|--------|----------|
| 1. POM Tarik Haywood | 14154 | 960648 | 070 PCT |
| 2. POM Jay Huang | 31783 | 965199 | 070 PCT |
| 3. POM Mateusz Wybraniec | 07999 | 966402 | BKLN CT |
| 4. SGT John Velez | 03819 | 940832 | 070 PCT |
| 5. POM Miguel Vanbrakle | 28743 | 955616 | 067 PCT |
| 6. POM Adnan Hussain | 00333 | 961531 | 070 PCT |
| 7. LT Dane Varriano | 00000 | 945076 | PBSI |
| 8. POM Alan Litvin | 12724 | 966170 | 070 PCT |
| 9. POM Thomas Gallina | 17250 | 966584 | 070 PCT |
| 10. COD Terence Monahan | 00000 | 876747 | CD OFF |

| Officer(s) | Allegation | Investigator Recommendation |
|----------------------|---|-----------------------------|
| A.POM Johnny Marquez | Force: Police Officer Johnny Marquez used pepper spray against individuals. | |
| B.POM Johnny Marquez | Force: Police Officer Johnny Marquez used pepper spray against Individuals. | |
| C. An officer | Force: An officer used pepper spray against § 87(2)(b) | |
| D. An officer | Discourtesy: An officer spoke discourteously to § 87(2)(b) | |
| E. An officer | Force: An officer used pepper spray against § 87(2)(b) | |
| F. An officer | Force: An officer used pepper spray against § 87(2)(b) | |
| G. An officer | Force: An officer used physical force against § 87(2)(b) | |
| H. An officer | Force: An officer used pepper spray against § 87(2)(b) | |
| I. An officer | Force: An officer used physical force against § 87(2)(b) | |

Case Summary

On September 28th, 2020, the CCRB received log 2020-21679 from the Internal Affairs Bureau Command Center, which contained the following complaint on behalf of § 87(2)(b) [BR 1].

On the night of May 30th, 2020, § 87(2)(b) and his friend § 87(2)(b) were participating in a George Floyd/Black Lives Matter demonstration at the intersection of Bedford and Church Avenues in Brooklyn. At about 10 p.m., § 87(2)(b) and over one hundred other protesters had a stand off with about fifty police officers that were arranged in a line across the east side of the intersection. One of the officers in this line, Police Officer Johnny Marquez of the 70th Precinct, pepper sprayed approximately two subjects that were encroaching on the police line [Allegation A: Force – Pepper Spray, § 87(2)(g)] PO Marquez then indiscriminately sprayed multiple other subjects [Allegation B: Force – Pepper Spray, § 87(2)(g)] Another unidentified officer pepper sprayed § 87(2)(b) [Allegation C: Force – Pepper Spray, § 87(2)(g)] and stated “get the fuck out of here” [Allegation D: Discourtesy – Word, § 87(2)(g)] Protesters, including § 87(2)(b) subsequently moved east along Church Avenue, away from the intersection. Multiple officers followed the protesters. Two of these officers pepper sprayed § 87(2)(b) [Allegation E: Force – Pepper Spray, § 87(2)(g)], [Allegation F: Force – Pepper Spray, § 87(2)(g)]. Shortly afterwards, an officer shoved § 87(2)(b) to the sidewalk [Allegation G: Force – Physical Force, § 87(2)(g)], § 87(2)(b) was pepper sprayed again as he lay on the ground [Allegation H: Force – Pepper Spray, § 87(2)(g)] Shortly afterward, an officer handcuffed § 87(2)(b) Another officer then allegedly punched or kneed § 87(2)(b) in the side of his rib cage, causing him to fall back to the sidewalk [Allegation I: Force – Physical Force, § 87(2)(g)] § 87(2)(b) was ultimately taken to One Police Plaza and issued a summons in lieu of arrest; there is no record of this summons.

The investigation received 17 body-worn camera videos for this case [BR 2]. Additionally, two body-worn camera videos received for case 202003782 are relevant to this investigation and are cited as evidence below [BR 3-4].

Findings and Recommendations

Allegation A: Force: Police Officer Johnny Marquez used pepper spray against individuals

Allegation B: Force: Police Officer Johnny Marquez used pepper spray against individuals

Allegation C: Force: An officer pepper sprayed § 87(2)(b)

Allegation D: Discourtesy: An officer spoke discourteously to § 87(2)(b)

In his CCRB interview [BR 5], § 87(2)(b) stated that he and his friend § 87(2)(b) walked to the intersection of Bedford and Church Avenues in Brooklyn minutes before 10 p.m. on May 30th, 2020. There were hundreds of protesters surrounding the intersection, as seen between 00:00 and 03:00 in a cell phone video that § 87(2)(b) recorded [BR 6]. Police lines, each comprised of between 25 – 50 officers, were formed across each crosswalk within the intersection, while other members of service remained within the center of the intersection. Some protesters continually threw bottles, bricks and other objects at the officers. This is seen, for example, between 03:30 and 04:30 in one of PO Marquez’s body-worn camera videos [BR 7] and between 02:05 and 03:05 in another of PO Marquez’s body-worn camera videos [BR 3]. At about 02:08 in the latter video, PO Marquez appears to be rendering aid to an officer who has been struck in the head. Beginning at about 04:32 in § 87(2)(b)’s video, officers are seen apprehending at least one protester who may have breached police lines. At 05:02, a Lieutenant or Captain is seen ordering a line of officers formed on the east side of the intersection to push protesters back, away from the intersection. Officers then begin to order protesters away from the intersection.

Approximately two protesters became involved in an altercation with about three of these officers. This is seen in PO Marquez's body-worn camera footage [BR 4] beginning at 01:05 (and at 05:29 in § 87(2)(b)'s footage). At 01:20, PO Marquez is seen pepper spraying these protesters. This is also captured between 00:55 and 1:05 in a video posted to the § 87(2)(b) channel on § 87(2)(b) [BR 8]. PO Marquez continues to deploy his pepper spray for about two seconds, firing indiscriminately at multiple protesters. When the protesters begin to disperse, he stops firing his pepper spray, and states "that's it," apparently to fellow officers.

PO Marquez stated during his CCRB interview [BR 9] that the protesters standing off with the eastern police line, of which he was a part, were persistently violent. Some threw bottles and bricks at officers in the line. Many protesters shoved officers or tried to breach the police line. This caused PO Marquez to fear for his safety and life, and the safety of other MOS. § 87(2)(g)

PO Marquez stated that he and other officers in the line attempted repeatedly to make protesters move back from the intersection and onto the sidewalks, but they refused. He explained that pepper spray was the only means he had to disperse the crowd, because they did not comply with verbal commands. PO Marquez used his pepper spray against a group of protesters that were encroaching closely on officers in the police line. He believed these protesters posed an immediate threat to his safety and that of his fellow officers.

Multiple officers in the police line across Church Street besides PO Marquez used pepper spray against protesters, at roughly the same time that PO Marquez deployed his pepper spray. Between 5:40 and 5:50 in § 87(2)(b)'s cell phone video, an officer suddenly comes into view and pepper sprays § 87(2)(b). At the same time, he is apparently heard stating "get the fuck out of here." The CCRB made multiple, unsuccessful attempts to contact § 87(2)(b) regarding the incident. On October 30th, 2020, § 87(2)(b) sent an e-mail to the undersigned stating that § 87(2)(b) informed me recently that he explicitly does not want to be contacted about this matter as he does not want to discuss or recall the event, so please do not contact him" [BR 12].

NYS VTL § 1156 provides that where sidewalks are provided and they may be used with safety it shall be unlawful for any pedestrian to walk along and upon an adjacent roadway. New York State CLS Vehicle and Traffic Law § 1156 [BR 13].

NYS Penal § 240.10 provides that a person is guilty of unlawful assembly when he assembles with four or more other persons for the purpose of engaging or preparing to engage with them in tumultuous and violent conduct likely to cause public alarm, or when, being present at an assembly which either has or develops such purpose, he remains there with intent to advance that purpose. New York State CLS Penal § 240.10 [BR 14].

NYPD PG 221.01 states that members of service may use force when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody. In all circumstances, any application or use of force must be reasonable under the circumstances. When appropriate and consistent with personal safety, members of the service will use de-escalation techniques to safely gain voluntary compliance to reduce or eliminate the necessity to use force. In situations in which this is not safe and/or appropriate, MOS will use only the reasonable force necessary to gain control or custody of subject(s). NYPD Patrol Guide § 221.01 [BR 15].

NYPD PG 221.07 states that O.C. pepper spray may be used to gain or maintain control of persons who are actively resisting arrest or lawful custody or exhibiting active aggression, or to prevent individuals from physically injuring themselves, members of the service, or other person. O.C. pepper sprays may be used in arrest or custodial restraint situations where physical presence and/or verbal commands have not been, or would not be, effective in overcoming physical resistance. O.C. pepper spray shall not be used in situations that do not require the use of physical force. Officers must avoid discharging O.C. pepper spray indiscriminately over a large area for disorder control. (The only exception is for members that have been trained in the use of pepper spray for disorder control, and who have been directed by a supervisor to deploy their pepper

spray.) NYPD Patrol Guide § 221.07 [BR 16].

§ 87(2)(b), § 87(2)(g)

Allegation E: Force: An officer used pepper spray against § 87(2)(b)

Allegation F: Force: An officer used pepper spray against § 87(2)(b)

Allegation G: Force: An officer used physical force against § 87(2)(b)

Allegation H: Force: An officer used pepper spray against § 87(2)(b)

Allegation I: Force: An officer used physical force against § 87(2)(b)

Known facts and general descriptions

§ 87(2)(b) stated that after officers had used pepper spray to disperse protesters at the intersection of Bedford and Church avenues, he continued to walk east along Church Avenue. Many officers ran after him and other protesters, and deployed pepper spray at random. At least two officers pepper sprayed § 87(2)(b) in his face. § 87(2)(b) was not able to specify where exactly along Church Avenue this occurred. § 87(2)(b) described one of the two officers as an apparently Hispanic sergeant, and provided the name “Sgt. Valdez.” He described the other officer as a white male with dark hair, high cheekbones, and a trim build. However, § 87(2)(b) explained that he might have had these two officers in mind only because they are seen in § 87(2)(b)’s cell phone video, which § 87(2)(b) had recently watched at the time of his interview. § 87(2)(b)’s video captures Sergeant John Velez of the 70th Precinct giving orders to “move back” and identifying himself between 05:10 and 05:20. A white male officer with dark hair and high cheekbones is captured at 04:45 in § 87(2)(b)’s cellphone video. Because the quality of § 87(2)(b)’s video is poor, it is not possible to discern the officer’s shield number or precinct lapel plate from the video, and there are no other indications of his identity.

After § 87(2)(b) was pepper sprayed, he walked to the sidewalk. Shortly afterward, he was pushed to the ground by an officer. He was not able to provide any description of the officer that pushed him. § 87(2)(b) was pepper sprayed again while he lay on the ground, but he was not able to provide a description of the officer(s) that pepper sprayed him. After some time, an officer

handcuffed § 87(2)(b) could not describe this officer. While he stood near the sidewalk, handcuffed, an officer – whom § 87(2)(b) was not able to describe -- punched or kned § 87(2)(b) in his ribcage, causing him to fall to the ground for a second time.

Body-worn camera and other footage received

The CCRB received 17 body-worn camera videos for this case [BR 2]. According to the associated receipt, a search was conducted for BWC footage recorded near the intersection of Bedford and Church avenues between 6 p.m. and 11:59 p.m. on May 30th, 2020. None of the videos capture § 87(2)(b) or the incident, as he described it. One of PO Marquez's body-worn camera videos [BR 4] captures protesters retreating from the east side of the intersection of Bedford and Church avenues, as § 87(2)(b) described, and officers running in the direction of the protesters shortly afterward. According to the clock internal to PO Marquez's body-worn camera video, these events occurred between 10:04 p.m. and 10:05 p.m. However, PO Marquez's video does not capture any officers pepper spraying or using force against any civilians. PO Marquez did not travel more than fifty feet away from the intersection of Bedford and Church in the course of recording this video. The § 87(2)(b) video cited above [BR 8] captures the same events seen in PO Marquez's video, from a different angle. The recorder of this video also remained within close proximity of the intersection while capturing the footage.

The undersigned reviewed all other footage possessed by the CCRB recorded near the time and place of occurrence. This footage included all relevant BWC and TARU footage received by the CCRB, including ten BWC videos received for case 202003841, eight BWC videos received for case 202004474, TARU fixed-camera footage received for case 202004474, and TARU handheld footage received for case 202003799. None of the videos received for these cases capture § 87(2)(b) or the incident.

NYPD documents reviewed

The CCRB is in possession of five criminal complaints (UF-61s) [BR 17] related to arrests at or near the intersection of Bedford and Church avenues on the night of May 30th. One of these UF-61s regards § 87(2)(b)'s arrest, and provides the name of a deponent (an officer that testified to the allegations in the complaint), Police Officer Jay Huang of the 70th Precinct. The CCRB interviewed PO Jay Huang (see below for more information). No other UF-61s were relevant to the investigation. The CCRB requested the summons issued to § 87(2)(b) which yielded negative results [BR 18]. § 87(2)(b) no longer had a copy of the summons he was issued at the time of his CCRB interview. The undersigned e-mailed § 87(2)(b), a clerk for the Criminal Court of New York City, requesting the status of § 87(2)(b)'s summons or related criminal action; § 87(2)(b) never responded. As well, no officer audited § 87(2)(b)'s name for warrants on the date of the incident, according to Sgt. Salvatore Desiano from IAB [BR 26].

The Patrol Borough Brooklyn South Detail roster [BR 19] shows that 24 officers from the 67th and 70th Precincts were assigned to protest details. However, the detail rosters do not provide the location of the details or the officers' final ends-of-tour. Furthermore, footage reviewed for this case shows that at least one hundred members of service were on-scene, and that these members were assigned to multiple commands besides the 67th and 70th Precincts.

Concurrent Investigations

On January 14th, 2021, Sgt. Desiano confirmed that there are no concurrent investigations of this incident [BR 20].

Ranking Officer

Chief of Department Terrence Monahan was the ranking officer on-scene. He was interviewed for cases 202005916, 202004408, 202003841 on March 8th, 2021 [BR 21]. Chief Monahan stated that at various times he ordered subordinate officers to enter crowds of protesters to arrest those throwing objects at police. He would then order the officers to “pull back out” of the crowd. He observed lines of police officers in the vicinity of the Shell gas station, on the east side of the intersection of Bedford and Tilden. Chief Monahan denied that he issued any instructions to these officers. He did not know which supervisors were overseeing these officers, and was not aware of any instructions issued to these officers. Chief Monahan denied that he saw any officers use batons to shove protesters or deploy their pepper spray over the course of the incident.

Chief Monahan was involved in only one arrest over the course of the demonstration at Bedford and Church Avenues. He could not describe the civilian that was arrested or identify any other members of service involved in the arrest. Chief Monahan described this arrest as occurring around 11:30 p.m., about one and a half hours after the time of the incident in this case.

Officers Interviewed

The CCRB interviewed Sgt. John Velez, PO Jay Huang, and PO Johnny Marquez for this case. In his CCRB interview, Sgt. Velez denied that he had used his pepper spray over the course of the night, and stated that he did not see any officers using pepper spray against protesters. He stated that he had no knowledge of the incident as described by § 87(2)(b) PO Huang and PO Marquez denied any awareness of events that occurred to the east of the intersection of Bedford and Church avenues, including any arrests made or force used. Without any additional NYPD documentation or video, no other officers were identified who could be interviewed.

Allegation Recitation and Disposition

§ 87(2)(b) alleged that on the night of May 30th, 2020, at around 10 p.m., he was pepper sprayed by two officers [Allegations D and E] and, shortly afterward, was pushed to the ground [Allegation F]. He was pepper sprayed for a second time [Allegation G], as he lay on the ground, and was then arrested. An officer then punched or kneed § 87(2)(b) while he was handcuffed [Allegation H]. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which either § 87(2)(b) or § 87(2)(b) has been a party [BR 22 and 23].
- PO Marquez has been a member of service for five years, over which time he has been the subject of three other complaints and three allegations. Cases 202003797 and 202006547 are still under investigation to date.

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- According to the New York City Office of Court Administration, neither § 87(2)(b) nor § 87(2)(b) have been convicted of a crime in New York City [BR 24 and 25].
- On January 14th, 2021, the CCRB queried the New York City Comptroller's officer for any notices of claim in regards to this incident. The results will be added to the case file upon receipt.

Squad No.: 7

Investigator: Will Rasenberger Will Rasenberger 01/19/2021
Signature Print Title & Name Date

Squad Leader: _____

Signature _____

Manager Vanessa Rosen _____

Print Title & Name _____

March 9, 2021 _____

Date _____

Reviewer: _____

Signature _____ Print Title & Name _____ Date _____